Supreme Court, U.S.
FILED
001148 DEC 28

No. 00-

IN THE

Supreme Court of the United States

STATE OF SOUTH CAROLINA,

Petitioner,

v.

DARRYL LAMONT HOLMES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

PETITION FOR A WRIT OF CERTIORARI

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164300

QUESTIONS PRESENTED

Does the admission of collateral remarks referring to other codefendants then present at the scene of the crime, which are contained within a greater self-inculpatory statement violate the Confrontation Clause?

Does the admission of an unavailable co-defendant's confession, which contains collateral references to other conspirators who helped plan and participated in the crime, violate the Confrontation Clause?

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OPINIONS BELOW

The opinion of the Supreme Court of South Carolina is reported at 536 S.E.2d 671 (S.C. 2000). It is reproduced in the Appendix at App. A. Rehearing was denied in an unpublished order. App. C. The defendant was convicted at trial and sentenced as documented by the indictment and respective sentencing sheets, reproduced in the Appendix at App. B.

STATEMENT OF JURISDICTION

Judgment was entered by the Supreme Court of South Carolina on August 21, 2000. Rehearing was denied on September 20, 2000. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

The State of South Carolina recognizes this petition for writ of certiorari is filed in excess of the ninety days allotted by Rule 13. The petitioner respectfully requests this Court nonetheless entertain this petition and forgive the delay, which resulted from obligations associated with docketing for trial of other capital cases.

CONSTITUTIONAL PROVISION INVOLVED

Sixth Amendment, U.S. Constitution
(Confrontation Clause)

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; . . .

STATEMENT OF THE CASE

During an attempted armed robbery, Bernard Holmes, the deceased brother of the respondent/defendant, Darryl Holmes shot and killed George Lollis inside the garage of his house. Also present inside the garage was a codefendant Henry Fuller. Darryl Holmes, the respondent/defendant, helped plan the armed robbery, drove Bernard Holmes and Henry Fuller to the neighborhood of the victim, and then drove to the business of the victim, George Lollis, and activated a security alarm to prompt the victim to leave his house and check on the alarm.

As the victim left his house to check on the alarm, Bernard Holmes and Henry Fuller, armed with handguns, attacked the victim in an attempt to rob him. The victim's wife, Mrs. Lollis exited the house and interrupted the robbery. This unplanned interruption prompted Bernard Holmes to shoot and kill George Lollis while Henry Fuller shot at, but did not hit Ms. Lollis. Bernard Holmes and Henry Fuller fled the house and notified Darryl Holmes to pick them up nearby.

After the murder of George Lollis, Bernard Holmes, in recounting the events of the armed robbery and murder, confessed to Bernard McKinney, a friend that he was the one who shot George Lollis inside his garage that night. In a later armed robbery, Bernard Holmes was killed.

Subsequent to arrest, Henry Fuller, the other person inside the Lollis garage at the time of the murder and robbery, gave a detailed voluntary confession to the Greenville Police Department, in which he recounts the events of the crime, including the preparation and planning the day of the armed robbery, the execution of the plan, what happened inside the

garage, and how they fled the area. Henry Fuller wrote the statement in his own handwriting and drew a map of the Lollis' house and surrounding area.

The State of South Carolina first tried and convicted Henry Fuller for his role in the Lollis' armed robbery and murder. Subsequently, the State called to trial the case of Darryl Holmes for his involvement. At the trial of Darryl Holmes, the State sought to introduce the statement of the deceased Bernard Holmes, through the live testimony of his friend, Bernard McKinney to whom he confessed pursuant to S.C.R.E. 804(b)(3), which is substantially similar to F.R.E. 804(b)(3). The trial court found that the statement of the deceased Bernard Holmes was admissible under 804(b)(3) as a self-inculpatory statement because Bernard Holmes, the deceased declarant admitted to being the person who fired the fatal shot that killed George Lollis. The defendant, Darryl Holmes, objected on the grounds that Bernard Holmes's confession to his friend to his involvement in the robbery and murder was not a statement against penal interest and that admission of the statement violated the defendant's Sixth Amendment right of confrontation. The trial court denied the objection.

During the trial, the State also called as a witness, Henry Fuller to examine him regarding the substance of his voluntary confession to the police. Henry Fuller invoked his Fifth Amendment right not to testify. The court examined Henry Fuller as to whether should the court inform him that he no longer possessed a fifth amendment right, his charges having already been adjudicated, would he still refuse to testify, even under threat of contempt of court. Henry Fuller informed the court that under no circumstances would he testify. The trial court therefore found that Henry Fuller was

unavailable for the purposes of 804(b)(3). The State then sought to offer evidence of Henry Fuller's confession through the testimony of the police officers that took the statement. The defendant, Darryl Holmes, objected on the grounds that Fuller's confession to his involvement in an armed robbery and murder was not a statement against penal interest and that admission of the statement violated the defendant's Sixth Amendment right of confrontation.

The trial court found that the totality of the statement was against Fuller's penal interest and collateral references to Bernard Holmes, the shooter, and Darryl Holmes, the driver did not transform the confession to a self-exculpatory one. The trial court, exercising caution in protection of the defendant/respondent's Sixth Amendment right of confrontation redacted the confession of Henry Fuller to remove any identifying reference to Darryl Holmes, and replaced such identifying references with gender neutral pronouns. The trial court based its decision on this Court's ruling in *Gray v. Maryland*, 523 U.S. 185 (1998).

The Defendant appealed claiming that admission of both the statement of the deceased Bernard Holmes and the confession of Henry Fuller was not admissible pursuant to S.C.R.E. 804(b)(3) and violated his Sixth Amendment right to confront his accusers. The Supreme Court of South Carolina agreed.

The South Carolina Supreme Court held that the deceased's statement to Bernard McKinney in which he admits to being the shooter and mentions Henry Fuller was a non-self-inculpatory statement which is inadmissible under S.C.R.E. 804(b)(3). The Supreme Court additionally held that the voluntary confession of Henry Fuller in which he

references the acts of the deceased Bernard Holmes and the defendant/respondent Darryl Holmes were additionally inadmissible under S.C.R.E 804(b)(3).

Moreover, the South Carolina Supreme Court held that the admission of both the deceased Bernard Holmes' confession to his friend and the custodial confession of Henry Fuller violated the defendant/respondent's Sixth Amendment right to confront his accusers — despite redaction.

The South Carolina Supreme Court relied on this Court's decision in *Williamson v. United States* to hold that any collateral remarks referencing planning details and other codefendants never fall within the 804(b)(3) exception to the hearsay rule simply because they are made within a broader inculpatory narrative. *State v. Holmes* (2000); *citing Williamson v. United States*, 512 U.S. 594, 600-01 (1994). South Carolina refused to engage in the two prong analysis identified in *Ohio v. Roberts* to determine whether these collateral remarks are within the scope of admissibility carved out by 804(b)(3) as suggested in *Williamson v. United States* and *Lilly v. Virginia*, 527 U.S. 116 (1999).

Instead, the South Carolina Supreme Court interpreted the *Williamson* and *Lilly* decisions to hold that ***any and all*** collateral remarks contained within any self-inculpatory confession are ***per se*** inadmissible. In *State v. Holmes*, the South Carolina Supreme Court read *Williamson* and *Lilly* to require that only the restricted remark where a declarant admits to the greatest culpability in the crime is admissible. Moreover, the South Carolina Supreme Court read *Williamson* and *Lilly* to hold that all other references to planning details such as how the crime was committed and references to the presence or involvement of codefendants

must be removed to protect the defendant's Sixth Amendment right to confront his accusers.

It is against this background — the South Carolina Supreme Court miss-interpretation of the *Williamson v. United States* and *Lilly v. Virginia* decisions to extend the Sixth Amendment right of confrontation so far that it eviscerates the rules of evidence regarding the admissibility of reliable hearsay — that certiorari is sought.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S CONFRONTATION CLAUSE JURISPRUDENCE

The rules of evidence regarding the admissibility of hearsay and the defendant's right to confront his accusers found in the Sixth Amendment serve the same interest — to promote the accuracy of the truth-finding process by assuring that courts admit only reliable evidence. *See Dutton v. Evans*, 400 U.S. 74, 89 (1970); *citing California v. Green*, 399 U.S. 149, 161 (1969); *Lilly v. Virginia*, 527 U.S. 116 (1999). Accordingly, where the proponent can demonstrate the reliability of the hearsay statement, the opportunity to cross-examine the declarant is not necessary for consideration of the statement by the jury. *Id.* For example, pursuant to the statement against penal interest exception to the hearsay rules recognize that the reliability of the self-inculpatory statement is inherent, as the declarant would have unlikely made the statement unless believing or knowing it to be true. *Ohio v. Roberts*, 448 U.S. 56, 66 (1980).

Recently, the United States Supreme Court has twice examined the issue of how to consistently interpret the Sixth Amendment's Confrontation Clause and the statement against penal interest hearsay exception; first, in *Williamson v. United States*, 512 U.S. 594 (1994) and second, in *Lilly v. Virginia*, 527 U.S. 116 (1999). In both decisions, this Court found that the proffered statement violated the defendant's Sixth Amendment right of confrontation because the statement could not be construed as one truly against the penal interest of the declarant. *Id.* Thus, the questionable circumstances of the statements demanded cross-examination of the declarant to insure reliability in order to be put before the jury. *Id.*

More specifically, in *Williamson v. United States*, the Supreme Court held that the declarant's statement that he had merely been a driver following the instructions of the defendant/petitioner was an exculpatory statement designed to curry favor with law enforcement and reduce his responsibility for the crimes. 512 U.S. 594, 604 (1998). In *Lilly v. Virginia*, the Supreme Court held that the declarant's statement that although he had stole some of the guns, but had not been the actual killer, was not against the penal interest of the declarant sufficient to fall within the hearsay exception. 527 U.S. 116, 138 (1999).

However, in both decisions, the Supreme Court left open the possibility that collateral remarks contained within actual self-inculpatory statements are admissible and that the Court was *not creating a per se ban* on the government's use of accomplice statements that also incriminates the defendant. *See Williamson v. United States*, 512 U.S. 594, 604 (1998); *Lilly v. Virginia*, 527 U.S. 116, 135 (1999).

The South Carolina decision in *State v. Holmes* in effect carries the *Williamson* and *Lilly* decisions to this very extreme. The *Holmes* decision reduces the scope of admissibility of an accomplice's statement to only those words that are plainly self-inculpatory as being constitutionally permitted by the confrontation clause. *State v. Holmes*, 536 S.E.2d 671 (S.C. 2000). Any reference whatsoever to the existence or involvement of codefendants — even if redacted — are per se violations of the defendant's confrontation clause rights. *Id.* The South Carolina Supreme Court held that the confrontation clause is violated whenever "the untested confession of a non-testifying accomplice" is admitted against the defendant. *Id.* This Sixth Amendment violation occurs irrelevant of the scope or context of the statement, irrelevant of the circumstances surrounding the statement, and irrelevant of whether references to the codefendant are replaced with gender-neutral pronouns. *Id.*

The South Carolina Supreme Court's decision creating a per se ban conflicts with this Court's prior caveats that *Williamson* and *Lilly* should not be so read. This Court should take the opportunity to clarify the complex decision in *Williamson* and the plurality in *Lilly* to resolve resulting conflicts in the admissibility of an accomplice's statement, including collateral remarks referencing planning details and the involvement of other conspirators. Ideally, examination of an instance where the declarant's statements are truly self-inculpatory and references to conspirators are merely context in the declarant's confession would provide necessary contrast to those self-exculpatory statements examined in *Williamson* and *Lilly*.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE SUPREME COURT OF SOUTH CAROLINA FILED AUGUST 21, 2000

State of South Carolina,

Respondent,

v.

Darryl Lamont Holmes,

Appellant.

Appeal From Greenville County
John W. Kittredge, Circuit Court Judge

Opinion No. 25189
Heard May 9, 2000 - Filed August 21, 2000

REVERSED

J. Falkner Wilkes, of Meglic, Wilkes & Godwin, of Greenville, for appellant.

Attorney General Charles M. Condon, Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, Assistant Attorney General Derrick K. McFarland, of Columbia; and Solicitor Robert M. Ariail, of Greenville, for respondent.

Appendix A

JUSTICE BURNETT: Darryl Holmes (appellant) appeals his convictions for murder and conspiracy, asserting the trial court improperly allowed the State to introduce prejudicial hearsay evidence against him. We agree and reverse appellant's convictions.

FACTS

Appellant was indicted for murder, conspiracy, and felony accessory before the fact for his alleged participation in the murder and attempted robbery of George Lollis. The facts of this case are fully set out in *State v. Fuller*, Op. No. 24961 (S.C. Sup. Ct. filed Nov. 22, 1999) (Shearouse Adv. Sh. No. 35 at 71). Appellant's alleged role in the crime involved driving Henry Fuller and Bernard Holmes to the victim's home, setting off the alarm at the victim's store to lure the victim out of his home, and returning to pick up Fuller and Bernard Holmes. At trial, the circuit court permitted the State to introduce hearsay statements attributed to Bernard Holmes and Henry Fuller implicating appellant in the crimes. The jury found appellant guilty of murder and conspiracy.

ISSUES

I. Did the trial court err in admitting a non-self-inculpatory statement, collateral to a self-inculpatory statement, under Rule 804(b)(3), SCRE?

II. Did the trial court err in admitting the out-of-court confession of an accomplice pursuant to Rule 804(b)(3), SCRE?

Appendix A

III. Did admission of statements of unavailable accomplices violate the Confrontation Clause?

DISCUSSION

I. Did the trial court err in admitting a non-self-inculpatory statement, collateral to a self-inculpatory statement, under Rule 804(b)(3), SCRE?

Appellant argues the trial court erred in allowing Bernard McKinney to testify as to statements made to him by Bernard Holmes. We agree.

" 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Hearsay is inadmissible unless the statement is of a type specifically excepted from the rule. Rule 804(b)(3) excepts from the hearsay rule statements against interest made by an unavailable declarant,[1] *i.e.*:

> A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true.

Rule 804(b)(3), SCRE.

1. Bernard Holmes was unavailable to testify because he was killed attempting another, unrelated burglary.

Appendix A

At appellant's trial, McKinney testified about planning the robbery with Bernard Holmes and appellant and his involvement in two aborted attempts to commit the crime. He also testified he was at a friend's house the night of the murder and did not participate, but that Bernard Holmes told McKinney he, Henry Fuller, and appellant committed the crime.

Prior to appellant's trial, McKinney gave identical testimony against Henry Fuller. This Court subsequently ruled the testimony inadmissible in *State v. Fuller*, Op. No. 24961 (S.C. Sup. Ct. filed Nov. 22, 1999) (Shearouse Adv. Sh. No. 35 at 71). We held a non-self-inculpatory statement, which is collateral to a self-inculpatory statement, is not admissible under Rule 804(b)(3), SCRE as a statement made by an unavailable declarant against his penal interest.

The State argues the testimony at issue here should, nevertheless, be admissible against appellant because there is other evidence corroborating the testimony. This argument misapprehends our holding in *Fuller,* where we stated "an accomplice's self-inculpatory statement combined with other independent evidence can inculpate a criminal defendant." *Id.* at 78. However, our opinion made clear the statement must first qualify under Rule 804(b)(3). Bernard Holmes' alleged hearsay statement implicating appellant does not qualify as a statement against interest under Rule 804(b)(3), regardless of the existence of evidence corroborating the statement.

II. Did the trial court err in admitting the out-of-court confession of an accomplice pursuant to Rule 804(b)(3), SCRE?

Appendix A

Appellant argues the trial court erred in allowing a police officer to read into evidence Henry Fuller's redacted confession.[2] We agree.

The trial court ruled those portions of Henry Fuller's confession which inculpate appellant were inadmissible under Rule 804(b)(3), SCRE. Nevertheless, he permitted a redacted version of the confession, eliminating any reference to appellant, to be read into evidence.

Non-self-inculpatory statements do not fall within the 804(b)(3) exception to the hearsay rule simply because they are "made within a broader narrative that is generally self-inculpatory."[3] *Williamson v. United States*, 512 U.S. 594,

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2. Henry Fuller refused to testify, claiming a Fifth Amendment privilege. Although he had already been convicted of murder at the time of appellant's trial, his appeal was pending before this Court. He stated to the court that he would not testify even if ordered to under threat of contempt. Appellant does not challenge the trial court's finding of unavailability.

3. As the United States Supreme Court has noted, it is not always clear whether a statement is truly "against interest." *See Williamson v. United States*, 512 U.S. 594, 603-04 (1994). "Confessions" which shift blame to co-conspirators cannot reasonably be viewed as self-inculpatory.

This is such a case. Fuller repeatedly depicts himself as caught up in the crime, being led by Bernard Holmes in particular. For example, he states, "I told Bernard I didn't want anything to do with it," "I had butterflies in my stomach and Bernard kept saying, 'Come on, man, come on,' " and "I did not mean for nobody to get hurt."

600-01 (1994); *Fuller*, at 77. In *Fuller*, we applied *Rule 804(b)(3)* very narrowly to only those portions of a hearsay statement which are plainly self-inculpatory.[4]

Although the redacted statement did not directly refer to appellant, the State's main purpose in seeking to introduce Fuller's statement was clearly to implicate appellant by inference. Like the hearsay statements of Bernard Holmes held inadmissible in *Fuller*, Fuller's non-self-inculpatory statements made collateral to a self-inculpatory statement are inadmissible under Rule 804(b)(3).

III. Did admission of statements of unavailable co-conspirators violate the Confrontation Clause?

Appellant argues admission of hearsay statements of his alleged co-conspirators violated the Confrontation Clause. We agree.

In all criminal prosecutions, the accused has the right "to be confronted with the witnesses against him." U.S. Const. Amend. VI; *Pointer v. Texas*, 380 U.S. 400 (1965) (applying Sixth Amendment to the States). Admission of a non-testifying accomplice's untested confession against the defendant violates the Confrontation Clause. *Lilly v. Virginia*, 119 S.Ct. 1887 (1999).

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4. In fact, a truly self-inculpatory statement of an accomplice would probably only be relevant if offered by the State to further a co-conspirator liability theory or by the defendant to *exculpate* himself.

Lilly is remarkably on point factually. Benjamin Lee Lilly, his brother Mark, and Mark's roommate Gary Wayne Barker went on a crime spree, culminating in murder. Mark and Barker gave separate statements to the police implicating Lilly. Mark refused to testify at his brother's trial, and the Commonwealth of Virginia offered his taped statements, arguing they were admissible as declarations against penal interest by an unavailable witness. The trial court admitted the tapes, Lilly was convicted, and the Supreme Court of Virginia affirmed. *Lilly*, 119 S.Ct. at 1892-93. The United States Supreme Court reversed. Although none of the four opinions in *Lilly* garnered more than a plurality, all nine Justices agreed the Confrontation Clause was violated when the untested confession of a non-testifying accomplice was admitted against the defendant.

Because of the fractured nature of the Supreme Court's *Lilly* decision, and because it is based largely on the federal hearsay rules, we decline to adopt the reasoning of the *Lilly* plurality. We simply conclude that appellant suffered a paradigmatic Confrontation Clause violation. The use of an accomplice's confession "creates a special, and vital, need for cross-examination." *Gray v. Maryland*, 523 U.S. 185, 194-95 (1998). The opportunity to confront his accusers was denied appellant when Bernard Holmes' and Henry Fuller's hearsay statements were admitted against him.

Moreover, Fuller's statement in this case was not saved by redacting direct references to appellant. The trial court erred in permitting the redaction based on the *Bruton* line of cases. *See Bruton v. United States*, 391 U.S. 123 (1968). Redaction has come into play as a tool to allow admission

of a co-defendant's confession ***against the confessor in a joint trial***. The point of redaction is to permit the confession to be used against the non-testifying confessor, while avoiding implicating his co-defendants. *See, e.g., Richardson v. Marsh*, 481 U.S. 200 (1987) (redacted confession in joint trial), *Gray v. Maryland*, 523 U.S. 185 (1998) (same). Redaction may not be used as a means to avoid the strictures of the hearsay rules and the Confrontation Clause.

CONCLUSION

The hearsay statements at issue in this case were not admissible under Rule 804(b)(3), SCRE as statements against interest. Furthermore, their admission violated appellant's right to confront the witnesses against him. Appellant's convictions are **REVERSED**.

TOAL, C.J., WALLER, J., and Acting Justice L. Henry McKellar, concur. PLEICONES, J., concurring in a separate opinion.

Appendix A

PLEICONES, J.: I concur with the majority's conclusion that appellant's convictions must be reversed, but write separately because I would analyze several of the issues differently.

In Part I, the majority concludes that the trial court erred in allowing witness McKinney to testify to statements made to McKinney by accomplice Holmes. The admission of these hearsay statements, which implicated appellant in the crimes, violated appellant's confrontation clause rights, *Lilly v. Virginia*, 527 U.S. 198, 119 S.Ct. 1887, 144 L.Ed. 2d 117 (1999), and were not admissible under Rule 804(b)(3), SCRE. *Williamson v. United States*, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994); *State v. Fuller*, 337 S.C. 236, 523 S.E.2d 168 (1999). The State's argument that accomplice Holmes' statement should nonetheless be admitted because it is corroborated by other evidence fundamentally misreads *Williamson* and *Fuller*. These opinions hold that the portion of an accomplice's hearsay statement (even a confession made to the police) which is "truly self-inculpatory" **may** be admissible under Rule 804(b)(3) if (1) the state is proceeding under a co-conspirator liability theory and (2) "the statement was sufficiently against the declarant's penal interest such "that a reasonable person in the declarant's position would not have made the statement unless believing it to be true," and this question can only be answered in light of all the surrounding circumstances." Here, the whole of accomplice Holmes' statement, not merely a "truly self-inculpatory" portion, was admitted. Accomplice Holmes' hearsay statement to witness McKinney is simply not the type of statement which **may** be admissible under Rule 804(b)(3).

Appendix A

In Part II of the opinion, the majority concludes that accomplice Fuller's redacted statement was inadmissible under Rule 804(b)(3). I agree, because as the majority notes in footnote 3, Fuller's statement minimized his role and shifted blame to appellant. In my view, Fuller's "arguably inculpatory statements are too closely intertwined with his self-serving declarations to be ranked as trustworthy" and consequently they cannot be deemed reliable. *Williamson, supra*, 512 U.S. at 608 (Ginsburg, J., concurring). Thus, it too is not a "truly self-inculpatory" statement of an accomplice which **may** be admissible under Rule 804(b)(3). Further, since Fuller's redacted statement was not within any hearsay exception, its admission violated appellant's confrontation clause rights. *Lilly v. Virginia, supra.*

In Part III, the majority appears to adopt a rule that in separate trials, an accomplice's confession, even if it meets *Williamson*'s and *Fuller*'s Rule 804(b)(3) "truly self-inculpatory" test, can never be admitted because to do so would violate the confrontation clause. I disagree. In my opinion, an accomplice's truly self-inculpatory confession, made under circumstances demonstrating it was sufficiently against the declarant's penal interest, **may** be admissible without running afoul of the constitution. See *Williamson* and *Fuller*. Further, other hearsay statements by an accomplice may be admissible in the defendant's trial without violating the confrontation clause because they fall within a firmly rooted hearsay exception.[1] Cf., *State v. Dennis*, 337

1. For example, admission of a statement pursuant the excited utterance exception found in Rule 803(2), SCRE, does not violate the confrontation clause. *White v. Illinois*, 502 U.S. 346, 112 S.Ct. 736, 116 L.Ed.2d 848 (1992).

S.C. 275, 523 S.E.2d 173 (1999) (admission of codefendant's excited utterance that defendant shot the victim did not violate defendant's confrontation clause rights). My analysis therefore differs from that part of the majority opinion which holds that the admission of an accomplice's confession in a separate trial is a *per se* violation of the confrontation clause.

For the reasons given above, I concur in the result reached here.

APPENDIX B — SENTENCING SHEETS

County of Greenville

The State of S.C.

v

Darryl Holmes

Race: *B*
Male: ✓
* * *
Atty: *Jack Swerling*
Ret. ✓

* * *

Indictment: *97* GS-23-*5932*
Warrant #: *E 031623*
Warrant Offense: *criminal conspiracy*
Date of Offense: *7/15-8/15/96*

Offense convicted/pled to: *criminal conspiracy*

* * *

Offense Code: *49*

* * *

s/ Fletcher C. Mann, Jr.
Fletcher C. Mann, Jr. Clerk of Court

Appendix B

SENTENCE

The above named defendant is committed to the State Depart. Of Corrections/County for a term of *5* years

Conditions: *consecutive to 97-5928*

* * *

Date: *3/19/98*

s/ [illegible] Kittredge
Presiding Judge, Thirteenth Judicial Circuit

Court Reporter: *Karen Tracy*

Solicitor: *Lori Reese & Rbt Arail*

Print Judge Name: *Kittredge*

Appendix B

County of Greenville

The State of S.C.

v

Darryl Holmes

Race: *B*
Male: ✓
* * *
Atty: *Jack Swerling*
Ret. ✓

* * *

Indictment: *97* GS-23-*5928*
Warrant #: E574329
Warrant Offense: *murder*
Date of Offense: *Aug 15, 1996*

Offense convicted/pled to: *murder*

* * *

Offense Code: *116*

Violent: ✓

* * *

s/ Fletcher C. Mann, Jr.
Fletcher C. Mann, Jr. Clerk of Court

Appendix B

SENTENCE

The above named defendant is committed to the State Depart. Of Corrections/County for a term of *his natural life*

* * *

Date: *3/19/98*

s/ [illegible] Kittredge
Presiding Judge, Thirteenth Judicial Circuit

Court Reporter: *Karen Tracy*

Solicitor: *Lori Reese & Rbt Arail*

Print Judge Name: *Kittredge*

APPENDIX C — ORDER OF THE SUPREME COURT OF SOUTH CAROLINA DENYING PETITION FOR REHEARING DATED SEPTEMBER 20, 2000

THE SUPREME COURT OF SOUTH CAROLINA

* * *

September 20, 2000

Assistant Attorney General Derrick K. McFarland
Office of the Attorney General
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Columbia, SC 29211

Robert M. Ariail, Esquire
Solicitor
13th Judicial Circuit
305 E. North St., Suite 325
Greenville, SC 29601-2185

Re: The State v. Holmes, Darryl

Dear Counsel:

The Court has refused your Petition for Rehearing in the above case in the following Order:

"Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ John H. Waller, Jr. J.

Appendix C

s/ E.C. Burnett, III J.

s/ Costa M. Pleicones J.

Justice James E. Moore not participating

September 20, 2000."

The remittitur in this matter is today being forwarded to the Clerk of the Court for Greenville County.

Very truly yours,

s/ Daniel E. Shearouse
CLERK

DES/djp

cc: Jeffrey Falkner Wilkes, Esquire
David P. Schwacke, Esquire